

Agricultural Marketing Service, USDA

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which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(12) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991; 66 FR 21830, May 1, 2001]

§ 1240.33 Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers of domestic honey. The Board shall conduct the initial review required by this paragraph prior to the first continuance referendum conducted after May 31, 2001.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers; and/or

(ii) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend the addition of members pursuant to paragraph (b)(1)(ii) of this section unless the proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

(c) Except as provided in paragraph (d) of this section, recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments, excluding the 2 years containing the highest and low-

est disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal period 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

[66 FR 21831, May 1, 2001]

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided*, That if, as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member and/or alternate may serve out the term for which such person was appointed, or if a member, whose position is based on the member's status as an importer is subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

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(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in §§1240.30 and 1240.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991; 66 FR 21831, May 1, 2001]

§ 1240.35 Procedure.

(a) A majority of members, of which at least 50 percent are producers, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 66 FR 21832, May 1, 2001]

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or

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actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to §1240.61:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part;

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;